



**Request for City Council Committee Action
From the City Attorney's Office**

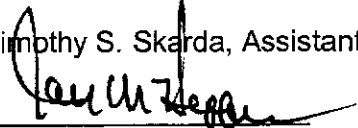
Date: November 24, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Officers Mark Bohnsack and James Boyd.

Recommendation: That the City Council approve the requests of Officers Mark Bohnsack and James Boyd for the reimbursement of attorneys' fees payable to Frederic Bruno & Associates in the amount of \$3,471.95 and Rice, Michels & Johnson, LLP in the amount of \$1,831.25 payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: None

Background/Supporting Information

Minneapolis Police Officers Bohnsack and Boyd have requested, through their attorneys, the reimbursement of legal fees pursuant to Minnesota Statute §465.76. The fees arose from their representation during an investigation of the death of Eric Netters. On September 4, 2003, a Hennepin County Grand Jury concluded that the use of force by Officer Bohnsack was reasonable and that no charges would be brought against the officer. Rice, Michels & Johnson initially represented Officer Bohnsack. Fred Bruno and Associates assumed representation and represented Officer Bohnsack through the completion of the

investigation of the case by the Hennepin County Sheriff and the grand jury proceedings. Rice, Michels & Johnson represented Officer Boyd throughout the proceedings.

The investigation involved an incident that arose on May 7, 2003, when Officers Bohnsack and Boyd attempted to remove Mr. Netters from a Ford Explorer that had been stopped for traffic violations. When Officer Boyd told Mr. Netters that he would be arrested and reached in the door to remove him, Mr. Netters began to speed away. Officer Boyd's arm was trapped in the door and was dragged and thrown by the vehicle. Officer Bohnsack had entered the passenger side of the vehicle and ordered Mr. Netters to stop, which he refused to do as the vehicle sped away. Mr. Netters was fatally shot by Officer Bohnsack when other attempts to stop the vehicle failed. Officer Boyd suffered a broken thumb and wrist. After hearing testimony and reviewing evidence the grand jury concluded that the officer's use of force was not excessive and that no criminal charges would be filed.

Frederic Bruno submitted itemized bills to this office for payment under Minn. Stat. § 465.76. The total amount of the itemized bills is \$3,471.954. Rice, Michels & Johnson submitted itemized bills in the amount of \$1,831.25. The hours expended were related to the criminal defense of the officers. The bill appears reasonable, especially considering the length of the investigation and media attention.

Minnesota Statute §465.76 provides:

"If reimbursement is requested by the officer or employee, the governing body of a home rule charter or statutory city or county may, after consultation with its legal counsel, reimburse a city or county officer or employee for any costs and reasonable attorneys fees incurred by the person to defend charges of a criminal nature brought against the person that arose out of the reasonable and lawful performance of duties for the city or county, provided if less than quorum of the governing body is disinterested, that such reimbursement shall be approved by a judge of the district court."

In 1984 the City Council appointed a criminal legal fees task force. The task force was directed to consider and recommend appropriate policies for the City to follow with respect to payment of legal fees. The task force examined the statutes, policies of other jurisdictions, the present policy, case law and alternative procedures. In a letter dated June 18, 1984, the task force ratified the existing system in which the City Council, after the advice of the City Attorney upon the reasonableness of the fees and the scope of employment issues, acts formally on a request for reimbursement. Prior to acting, the Council reviews each case with reference to the general principles as follows:

1. Nature of the inquiry or allegations by the investigating authority.
2. Whether the action arose out of the performance of the officer or employee's duties.
3. Whether he or she acted in good faith.
4. Whether there was malfeasance or willful or wanton neglect of duty.
5. Whether he or she was acting pursuant to directions from a superior or pursuant to law.
6. Whether the morale of other City officers and employees would be adversely affected by paying or not paying the claim.

The above criteria were developed under Minn. Sess. Laws 1969, Chapter 790, Section 2, granting the City of Minneapolis authority to reimburse legal fees to employees in criminal proceedings. Minn. Stat. §465.76 was later enacted. The new section is fundamentally the same, except insofar as it adds the requirement that the incident arise from the "lawful" performance of the duties of the employee. It had been the practice

under Chapter 790 to approve reimbursement only upon acquittal or failure to charge the employee. Minn. Stat. §465.76 makes this practice mandatory.

With regard to the first consideration set forth in the letter of the task force, the review of the conduct of the officers falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation by the Hennepin County Sheriff and related grand jury proceeding conducted by the Hennepin County Attorney.

The second criterion is also satisfied. The officers were on duty and engaged in law enforcement activities at the time of the incident. The officers were acting for a public law enforcement purpose and under color of law.

Regarding the third consideration, the officers acted in good faith. The Hennepin County Grand Jury reviewed all the evidence and determined that the use of force was appropriate and that no criminal charges would be filed against the officers. At the time that the officers acted they had a reasonable belief that their actions were reasonable and necessary.

Regarding the fourth consideration, we conclude that there was no malfeasance or willful or wanton neglect of duty. The officers were acting pursuant to law and the policies and procedures of the Minneapolis Police Department.

As to consideration number five, the officers were acting pursuant to law and exercising their duties as police officers. The actions of Officers Bohnsack and Boyd were authorized by law and within their legal authority, as determined by the grand jury.

Finally, with regard to consideration number six, the denial of the request for attorney fees would have a negative impact on the morale of other City employees. Police officers who were making a good faith effort to enforce the law would be responsible for the payment of attorney's fees arising from mandatory investigations into conduct.

Based on the foregoing it is our recommendation that Officers Mark Bohnsack and James Boyd be reimbursed for criminal defense fees pursuant to Minn. Stat. §465.76.